



January 28, 2000

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
Justice Center
401 West Belknap
Fort Worth, Texas 76196-0201

OR2000-0306

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131579.

The Tarrant County Sheriff's Department received a request for offense report numbers 99078466 and 99091188. You state that the offense reports concern pending criminal litigation involving the state. You claim that, except for the first page offense report information which has been released, the requested information is exempt from disclosure under section 552.103 of the Government Code.¹ In addition, you inform us that you seek a ruling on behalf of the Tarrant County Criminal District Attorney and Sheriff's Department (collectively "Tarrant County") with regard to the remaining responsive information. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. To show that section 552.103(a) is applicable, Tarrant County must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *University of Tex.*

¹ "Basic information about an arrested person, an arrest, or crime" is not excepted from required public disclosure. Gov't Code §552.108(c). Basic information is the type of information that is considered to be front page offense report information, including a detailed description of the offense and arrest. See generally *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S. W.2d 177 (Tex. Civ. App.—Houston ;14th dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W. 2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) Furthermore, "front page information" may not be withheld from disclosure under section 552.103. Open Records Decision No. 597 at 3 (1991).

Law Sch. v. Texas Legal Found., 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, Tarrant County must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

In this instance, you state that the defendant is scheduled to appear in court in the cases related to offense report numbers 99078466 and 99091188 in January, 2000. We conclude, therefore, that litigation is reasonably anticipated. We additionally find that the documents you have submitted are related to the reasonably anticipated litigation for the purposes of section 552.103(a). Therefore, you may withhold the requested offense reports under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Furthermore, information that has been previously released to the public may not be withheld under section 552.103. Finally, we note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 131579

Encl. Submitted documents

cc: Mr. Matt Latham
P.O. Box 748
Fort Worth, Texas 76103
(w/o enclosures)